

Exhibit B

LITTON LOAN LEGAL DEPT Fax: 713-966-86

Oct 21 2009 09:09am P004

CODE 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

TIMOTHY BURKE, et al

Plaintiff(s).

vs

Case No. CV09-03134

LITTON LOAN SERVICING, LP

Dept. No.

Defendant(s).

SUMMONSTO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.
READ THE INFORMATION BELOW VERY CAREFULLY.A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that
document (see complaint or petition). When service is by publication, add a brief statement of the object of the
action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of
this summons, exclusive of the day of service:
 - a. File with the Clerk of the Court, whose address is shown below, a formal written
answer to the complaint or petition, along with the appropriate filing fees, in
accordance with the rules of the Court; and
 - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address
is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may
enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 20 day of OCT 19 2009.

Issued on behalf of Plaintiff(s):

HOWARD W. CONYERS
CLERK OF THE COURT

Name: Robert R. Hager

By: R. Simpson

Address: 245 E Liberty St. Ste 170

Deputy Clerk

Reno, NV 89501

Second Judicial District Court

Phone Number: 775-325-5000

75 Court Street

Reno, Nevada 89501

EXHIBIT 1

LITTON LOAN LEGAL DEPT Fax: 713-966-86

Oct 21 2009 09:09am P005

1
2 **AFFIDAVIT OF PERSONAL SERVICE**
3 (To be filled out and signed by the person who served the Defendant or Respondent)
4 STATE OF _____)
5 COUNTY OF _____)
6
7 I, _____, being first duly sworn, depose and say:
8 (Name of person who completed service)
9
10 1. That I am not a party to this action and I am over 18 years of age;
11
12 2. That I personally served a copy of the Summons, the Complaint for Divorce, and the
13 following documents: _____
14 _____
15 _____
16 upon _____, at the following
17 (Name of Defendant or Respondent who was served)
18 location: _____
19 _____
20 on the _____ day of _____, 20____
21 (Month) (Year)
22 _____
23 (Signature of person who completed service)
24 Subscribed and Sworn to before me this
25 _____ day of _____, 20____
26 _____
27 NOTARY PUBLIC
28

LITTON LOAN LEGAL DEPT Fax: 713-966-8111

Oct 21 2009 09:09am P006

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

SUMMONS

(Title of Document)

filed in case number: _____

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: _____

(Signature)

(Print Name)

(Attorney for)

Affirmation
Revised December 15, 2006

LITTON LOAN LEGAL DEPT Fax: 713-966-86

Oct 21 2009 09:09am P007

CODE 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

TIMOTHY BURKE, et al

Plaintiff(s).

vs.

Case No. CV09-03134

LITTON LOAN SERVICING, LP

Dept. No.

Defendant(s).

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS.
READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).
The object of this action is:

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this summons, exclusive of the day of service:

- a. File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court; and
- b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this OCT 19 2009 day of 20

Issued on behalf of Plaintiff(s):

HOWARD W. CONYERS
CLERK OF THE COURT

R. Simpson

Name: Robert R. Hager

By:

Deputy Clerk

Address: 242 E. Liberty St., Reno, NV

Second Judicial District Court

Reno, NV 89501

75 Court Street

Phone Number: 775-786-3781

Reno, Nevada 89501

LITTON LOON LEGAL DEPT Fax: 713 966 86

Oct 21 2009 09:09am P008

1
2 **AFFIDAVIT OF PERSONAL SERVICE**
3 (To be filled out and signed by the person who served the Defendant or Respondent)
4 STATE OF _____)
5 COUNTY OF _____)
6
7 I, _____, being first duly sworn, depose and say:
8 (Name of person who completed service)
9
10 1 That I am not a party to this action and I am over 18 years of age;
11
12 2 That I personally served a copy of the Summons, the Complaint for Divorce, and the
13 following documents: _____
14 _____
15 _____
16 upon _____ at the following
17 (Name of Defendant or Respondent who was served)
18 location: _____
19 _____
20 on the _____ day of _____, 20____.
21 (Month) (Year)
22 _____
23 (Signature of person who completed service)
24 Subscribed and Sworn to before me this
25 _____ day of _____, 20____.
26 _____
27 NOTARY PUBLIC
28

LITTON LOAN LEGAL DEPT Fax: 713-966-88

Oct 21 2009 09:09am P009

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

SUMMONS

(Title of Document)

filed in case number: _____

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-OR-

☐ For the administration of a public program

-OR-

☐ For an application for a federal or state grant

-OR-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: _____

(Signature)

(Print Name)

(Attorney for)

Affirmation
Revised December 15, 2006

LITTON LOAN LEGAL DEPT Fax: 713-965-88.

Oct 21 2009 09:09am P010

FILED
Electronically
10-16-2009 03:46:16 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1104767

1 Robert R. Hager, NV State Bar No. 1482
Trevia J. Hearne, NV State Bar No. 4550
2 **HAGER & HEARNE**
245 E. Liberty - Suite 110
3 Reno, Nevada 89501
4 Tel: (775) 329-5811
Fax: (775) 329-5819
5 Email: rhager@hagerhearnelaw.com
thearne@hagerhearnelaw.com
6 parrlawoffices@sbcglobal.net
Counsel for Plaintiffs

7
8 **SECOND JUDICIAL DISTRICT COURT**
9 **WASHOE COUNTY, NEVADA**

HAGER & HEARNE
245 E. Liberty St., Ste 110
Reno, NV 89501
(775) 329-5800 FAX (775) 329-5819

10 TIMOTHY BURKE, DAWN BURKE
11 RUSSELL L. SMITH, and
SHIRLEY HOPE SMITH

Case No:

COMPLAINT

12 Plaintiffs,
13 vs.

14 HSBC BANK, USA, NATIONAL
ASSOCIATION, QUALITY LOAN
15 SERVICE CORP., LITTON LOAN
SERVICING, LP, MORTGAGE ELECTRONIC
16 REGISTRATION SYSTEMS, INC.
FIRST CENTENNIAL TITLE, CARRINGTON
17 MORTGAGE SERVICE, LLC, and
18 DOES 1 - 10 and Corporations A - Z;

19 Defendants.

1. Wrongful Foreclosure
2. Fraud in the Inducement
3. Conspiracy to Commit Fraud By Creation, Operation and Use of the MERS System
4. Conspiracy to Commit Wrongful Foreclosure By Creation, Operation and Use of the MERS System
5. Unjust Enrichment
6. Relief requested: Injunctive, reformation, declaratory, and quiet title

23
24 COMES NOW, Plaintiffs, TIMOTHY BURKE, DAWN BURKE, RUSSELL L.
25 SMITH, and SHIRLEY HOPE SMITH, by and through their attorney of record, HAGER & HEARNE, and file their Complaint, as follows:

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Oct 21 2009 09:09am P011

HACER & HARRIS
 265 E. Liberty St., Ste 110
 Reno, NV 89501
 (775) 329-5800, FAX (775) 329-5809

STATEMENT OF THE CASE

This case arises because the Plaintiffs were the victims of unlawful and wrongful foreclosures and/or an underlying conspiracy to commit fraud that resulted in foreclosures being initiated by the Defendants on the Plaintiffs' homes. These foreclosures were, and are, based upon a deed of trust and a note in each mortgage that are no longer held by the same entity or party and are based upon deeds of trust that were flawed at the date of origination of the loans because the Mortgage Electronic Registration Service (MERS) was named as the beneficiary or nominee of the lender on the deeds of trust and because the naming of MERS as the beneficiary was done for the purpose of harming the borrower. MERS was never intended to be the lender and now the servicers Litton Loan and Carrington Mortgage Service, LLC or some party has declared the default on these loans even though the true beneficiaries have not declared a default and have no further interest in the notes and, finally, the obligations reflected by the notes executed by Plaintiffs allegedly secured by the MERS deeds of trust have been satisfied because the investors who furnished the funding for these loans has been paid to the degree that extinguishment of the debt has occurred with the result that there exists no obligation on which to base any foreclosure on the properties owned by the Plaintiffs. Defendants have attempted to foreclose upon the properties of the Plaintiffs when they do not have a lawful right to foreclose and have, at most, an unsecured debt.

PARTIES

1. The Plaintiffs Timothy Burke and Dawn Burke are at imminent risk of losing their home because Defendants, Litton Loan Servicing LP, Quality Loan Service Corp., Mortgage Electronic Registration Systems Inc. have served upon Plaintiffs a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust

LITTON LOAN LEGAL DEPT Fax. 713-966-89

Oct 21 2009 09:10am P012

HAGER & HEARNE
 245 E. Liberty St., Ste 110
 Reno, NV 89501
 (775) 329-5300 FAX (775) 329-5819

1 and have now sold the property to HSBC Bank USA, NA, as Trustee, which property is
 2 held as an REO. Further HSBC Bank has filed an ejectment action against the Plaintiffs
 3 Burke.

4 2. The Plaintiffs Russell L. Smith and Shirley Hope Smith are at imminent risk
 5 of losing their home because Carrington Mortgage Service, LLC has served upon Plaintiffs
 6 a notice of default and intent to begin foreclosure on the Plaintiffs' property.

7 3. Plaintiffs Timothy Burke and Dawn Burke are residents of the County of
 8 Washoe and Plaintiffs maintained Plaintiffs' primary residence at all times relevant and
 9 material to the claims in this case with the legal description of:

10 PARCEL 1:

11 PARCEL 4 OF PARCEL MAP NO. 1041 FOR FRANK P. CAVATAIO JR.,
 12 ACCORDING TO THE MAP THEREOF, FILED IN THE OFFICE OF THE
 13 COUNTY RECORDER OF WASHOE COUNTY, STATE OF NEVADA, ON
 14 FEBRUARY 7, 1980, AS FILE NO. 656170, OFFICIAL RECORDS

15 PARCEL 2:

16 A NON EXCLUSIVE EASEMENT FOR ROADWAY AND UTILITIES OVER
 17 THOSE PORTIONS OF PARCEL 1, 2, AND 3, LYING WITHIN "CAVATAIO
 18 CIRCLE" AS SHOWN ON PARCEL MAP 1041, FOR FRANK P. CAVATAIO,
 19 JR., ACCORDING TO THE MAP THEREOF, FILED IN THE OFFICE OF
 20 THE COUNTY RECORDER OF WASHOE COUNTY, STATE OF NEVADA,
 21 ON FEBRUARY 7, 1980, AS FILE NO. 656170, OFFICIAL RECORDS

22 APN: 05030219

23 Plaintiffs' real property as described above is commonly referred to and located at
 24 4695 Cavataio Circle, Reno, NV 89704.

25 4. Plaintiffs Russell L. Smith and Shirley Hope Smith are residents of the County
 of Washoe, and Plaintiffs maintains Plaintiffs' primary residence at all times relevant and
 material to the claims in this case with the legal description of:

LITTON LOAN LEGAL DEPT Fax: 713-966-88

Oct 21 2009 09:10am 2013

HAGER & HEARNL
 345 E. Liberty St., Ste 110
 Reno, NV 89501
 (775) 129-5500, FAX (775) 329-3819

1 Lot 25F, in Block F of SADDLEHORN SUBDIVISION UNIT 2, according to the
 2 Map thereof, filed in the office of the County Recorder of Washoe County,
 State of Nevada, on April 20, 1990, under File No. 1394539, Official Records.

3 APN: 150-141-16
 4 Order Number 00149270-KM

5 Plaintiffs' real property as described above is commonly referred to and located at
 6 14255 W. Windriver Lane, Reno, NV 89511

7 3. Defendant CARRINGTON MORTGAGE SERVICES, LLC, is registered to do
 8 business in the State of Nevada and has notified the Plaintiffs that it will commence
 9 foreclosure in the State of Nevada against their property located in the County of Washoe.

10 4. Defendant MERSCORP, INC. was a Delaware corporation doing business in
 11 the State of Nevada through its division or subsidiary, Defendant MERS, Inc., a Delaware
 12 corporation. Upon information and belief, MERSCORP, INC., was a director of MERS,
 13 INC. Defendants MERSCORP, INC., and MERS, Inc. are hereinafter collectively referred
 14 to as "MERS."
 15

16 5. Defendant LITTON LOAN SERVICING, LP, is a foreign corporation doing
 17 business in the State of Nevada and has foreclosed on the Burke property without right.

18 6. Defendant HSBC BANK, NA, as Trustee, is not registered to do business in
 19 the State of Nevada and holds the Burke property as an R&O. HSBC Bank has filed papers
 20 to have the Plaintiffs evicted from their home.

21 GENERAL ALLEGATIONS

22 7. In the United States, home purchases are typically financed by mortgages or
 23 loans that are secured by a deed of trust and a note which, when executed on behalf of the
 24 same entity and held by the same entity as a "note and deed of trust", entitle the holder of
 25

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Oct 21 2009 09:10am P014

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1 the note and deed of trust to foreclose on the property of the borrower if the borrower is in
 2 default without legal excuse or recourse.

3 8. A reported 3 million foreclosures occurred in the U.S. in 2008. Foreclosures
 4 to date during calendar year 2009 are at a higher rate than that which occurred during
 5 2008, with 1 in 16 homes in the State of Nevada going into foreclosure during the first six
 6 months of 2009.

7 9. From 2003 through 2008, the Defendants entered into mortgages with
 8 deeds of trust and notes that were separated after the execution of the mortgage, the note
 9 was sold to an investor who literally and actually provided the funds for the loan given to
 10 the borrower. Prior to or immediately after the contract was signed by the borrower, the
 11 note was funded by a party other than the originator or servicer of the loan.

12 10. The Deed of Trust named a party as the "lender" who did not fund the
 13 mortgage and had no intention of funding the mortgage; yet, that "lender" who had no
 14 beneficial interest named MERS as the beneficiary and MERS had no beneficial interest
 15 nor did MERS represent any party to the deed of trust who had a beneficial interest.

16 11. Plaintiffs executed a note and separately a deed of trust (See, Exhibit "1")
 17 naming MERS as the beneficiary and/or nominee of the beneficiary/lender, and that note
 18 was separated from the deed of trust after the execution by Plaintiffs of those documents,
 19 with the note being transferred to investors whose money had funded the loan taken out
 20 by the Plaintiffs/borrowers. Plaintiffs believe that neither Litton Loans nor Carrington
 21 Mortgage Services, LLC furnished any of the funding for the loans but were merely
 22 transfer agents for money from the investors to loans taken by the Plaintiffs.

23 12. Simultaneously with or immediately after the loan was taken out by the
 24 Plaintiffs, the obligations reflected by the notes were satisfied by monies provided by the
 25

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Oct 21 2009 09:10am P015

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Reno, NV 89501
(775) 329-5800, FAX (775) 329-5819

1 investors who then obtained ownership of and right to payments under the terms of the
2 notes. These investors are the only parties to whom any obligation arose after the loans
3 were securitized, and are the only proper parties to later declare a default and to have a
4 right to direct a sale if the Plaintiffs did not make payments as required under the terms of
5 the notes.

6 13. The note that had been executed with the deed of trust by the Plaintiffs were
7 separated from the deed of trust in that the note became part of a pool of mortgages and
8 lost its individual identity as a note between a lender and borrower, but instead merged
9 with the other notes as a total obligation due to the investor.

10 14. The Mortgage Electronic Registration Service was created by the Defendants
11 identified herein as co-conspirators in relation to the MERS system with the specific
12 intent that MERS would be named the beneficiary and/or as the nominee of the lender on
13 the deed of trust which Plaintiffs were induced into signing. However, MERS was not a
14 nominee for the lender, because the lender was an investor who had provided the funds
15 for the loan. This fact was known to MERS and the purported lender and the subsequent
16 assignee of any and all rights purported to have been assigned by MERS at the time the
17 note and deed of trust was signed by the Plaintiffs and at the time of each and every such
18 later purported assignment by MERS of any interest in the note and deed of trust

19 15. The foreclosures complained of herein were initiated against Plaintiffs by
20 parties who have and had no standing to commence or maintain any foreclosure
21 proceedings, both by the express language of the deeds of trust which required that the
22 beneficiary/party who was owed the obligation declare the default and direct the sale, and
23 by the laws governing the commencement and advancement of foreclosure proceedings
24 which require the true beneficiary to declare such default and direct such sale. Quality
25

LITTON LOAN LEGAL DEPT Fax: 713-966-88

Oct 21 2009 09:10am P016

HAGER & HEARNE
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(775) 329-3800 FAX (775) 329-5819

1 Loan Services, Carrington Mortgage Services, LLC, HSBC Bank, NA, and the investors
2 that funded this loan were strangers to the purported loan transactions and which parties
3 were and are unknown to Plaintiffs and, neither Litton Loan nor Carrington Mortgage
4 Services funded the Plaintiffs' loans with any of its own assets and are not owed any of
5 the funds to be repaid by Plaintiffs, and do not stand to suffer any loss should they be
6 enjoined from foreclosing on the Plaintiffs' homes.

7
8 16. The foreclosure on Plaintiffs' home complained of herein was initiated by
9 Defendants who had and have no lawful right to initiate, advance or maintain any
10 foreclosure action against the Plaintiffs' home.

11 17. All Defendants knew or should have known that prior to the time that the
12 loans were taken out by the Plaintiffs which are at issue herein, the loans which named
13 MERS on the deed of trust were securitized or intended to be securitized prior to the
14 preparation of the notes and deeds of trust reflecting each such loan. Defendants also
15 knew or should have known that the scheme employed by all Defendants involved in the
16 origination, aggregation and securitization of mortgage-backed loans originated from
17 2003 through 2008 and secured by real property in the United States originated from
18 2003 through 2008 included financial incentives which were designed to result in the
19 loans being written on terms which were likely or certain to result in foreclosure, and that
20 the scheme described herein included financial incentives designed to motivate
21 appraisers, mortgage brokers, lenders, aggregator banks and securitizing banks to steer
22 borrowers into loans they could not afford and could not repay so that the loans would go
23 into default and the Defendants involved in servicing, aggregating and securitizing those
24 loans could make yet more profits from default, foreclosure and selling the properties
25 after foreclosure.

-7

LITTON LOAN LEGAL DEPT Fax: 713-966-86

Oct 21 2009 09:10am P017

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18. The financial incentives mentioned in the previous paragraph included without limitation the hiring of appraisers who had financial incentive to appraise properties at a value that would justify the loan requested, the payment to mortgage brokers of higher fees for sub-prime and sub-sub-prime loans than for prime loans and the use of novel and unprecedented underwriting criteria such as stated income and 100% or more financing of the purchase price, and the purchase of loans from lenders by aggregators and servicers of loans at more than face value if the loans were sub-prime or sub-sub-prime and in particular if such loans also included an adjustable interest rate and/or a pre-payment penalty. In the case of Plaintiffs, the loan was advanced based upon stated income, but that income was not stated by the Plaintiffs. Also, in this case, it appears that the equity in the homes was used to secure a larger loan based upon the value of the home when it was exaggerated by the market manipulated by the Defendants.

19. All Defendants who originated, serviced, aggregated and/or securitized the Plaintiffs' loans knew or should have known at the time of those actions by Defendants that the financial incentives described in the previous paragraph herein were not disclosed to the investor or to the Plaintiffs/borrowers, and that the Defendants who originated, serviced, aggregated and/or securitized the Plaintiffs' loans also purchased credit default swaps which were essentially bets that the Plaintiffs' loans would fail, resulting in multiple payments to those Defendants of the face amount of the loans, and knew or should have known that fact was also concealed from the investors and Plaintiffs who were instead intentionally misled by Defendants to believe that the Plaintiffs qualified for the loans under residential loan underwriting standards used in the industry.

20. All Defendants who originated, serviced, aggregated and/or securitized the Plaintiffs' loan knew or should have known at the time of those actions by Defendants that

LITTON LOAN LEGAL DEPT Fax: 713-966-83

Oct 21 2009 09:10am P018

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1 the more likely or certain the loan was to fail, the more likely that failure was to cause the
2 entire mortgage-backed security pool, which included Plaintiffs' loans, to fail, the more
3 profitable those events would be to Defendants.

4 21. Under the securities and federal banking laws, rules and regulations, the
5 investors and the borrowers were entitled to information regarding all of the profits,
6 payments, kick-backs, fees and insurance and credit default swaps related to the
7 transaction which included the investors providing the funds loaned to the borrower, and
8 the concealment of those facts by all the Defendants who originated, serviced, aggregated
9 and/or securitized the Plaintiffs' loan was an intentional misrepresentation and/or
10 intentional material omission of fact by those Defendants for the purpose of using the
11 Plaintiffs/borrowers' signatures on a note and deed of trust to defraud the investors, the
12 borrowers, the insurers of loans, the issuers of credit default swaps and eventually the
13 government whom these Defendants, upon information and belief, falsely told the FDIC
14 or the federal government or the federal reserve that the Defendants were in dire need of
15 trillions of dollars in federal funds due to "toxic assets" being allegedly on the books of
16 Defendants.

17
18 22. All Defendants participated in a conspiracy to cause Plaintiffs to enter into
19 instruments that would result in the foreclosure on their homes and to initiate
20 foreclosures on Plaintiffs' homes without the lawful right to do so or to commence and
21 advance foreclosure against Plaintiffs with knowledge that the Plaintiffs had been
22 deceived by having not been informed that the loans they took out were intended to result
23 in foreclosures and consequently more profits to the Defendants. As a proximate and
24 direct result, Defendants, Carrington Mortgage Services, LLC, Litton Loans, and HSBC
25 Bank, NA have been unjustly enriched by the payments of the Plaintiffs on the note and by

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1 the profits earned by Defendants from the declarations of default, the commencement and
2 advancement of foreclosures on the Plaintiffs' properties.

3 23. The lenders and investors in mortgage-backed securities, including some of
4 the Defendants, have obtained bailout money from the United States Treasury and the
5 Federal Reserve in the amount of trillions of dollars for the stated purpose of
6 compensating the lenders and investors for losses sustained due to the alleged default in
7 on residential mortgage loans including those of Plaintiff.

8 24. The servicers and investors in mortgage backed securities, including the
9 Defendants, have used those funds to repay investors who funded Plaintiffs' loan and/or
10 to settle the lawsuits of those investors against the securitizing banks for fraud, including
11 the Defendants, Carrington Mortgage Services, LLC, Litton Loans and HSBC Bank, NA,
12 and Corporations A - D, with such use of those funds having extinguished the obligations
13 reflected by the notes that were executed by the Plaintiffs, and thus have no right to collect
14 on the notes, and no right to initiate foreclosures on Plaintiffs' homes.

15 25. The Plaintiffs have deeds of trust that state that the beneficiary and/or
16 beneficiary as the nominee of the lender is MERS, and the Plaintiffs have been declared in
17 default by parties not entitled to declare the default. When the Borrowers/Plaintiffs did
18 not pay the payments agreed in the "Notes," unknown parties caused a trustee to notice
19 the obligor of the default and intent to sell under Nevada law.

20 26. MERS does not have standing merely because it is the alleged beneficiary
21 under the Deed of Trust. It is not a beneficiary and was not a nominee of a beneficiary
22 under the notes, and, in any event, the mere fact that an entity is a named beneficiary of a
23 Deed of Trust is insufficient to enforce the obligation. Since the Deed of Trust attempts to
24
25

LITTON LOAN LEGAL DEPT Fax: 713-966-88.

Oct 21 2009 09:11aa P020

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1 name MERS as both a beneficiary and a nominee, MERS is not a true beneficiary with
 2 the rights to foreclose. The Deed of Trust states as follows:

3 "MERS is a separate corporation that is acting solely as a nominee for Lender and
 4 Lender's successors and assigns. MERS is the beneficiary under this Security Instrument.

5 And later it says this: The beneficiary of this Security Instrument is MERS (solely as
 6 nominee for Lender and Lender's successors and assigns) and the successors and assigns
 7 of MERS." However, the terms and conditions given to the members of MERS, i.e. the
 8 servicers or "lenders," in the case of the Burke and Russell loans, Fremont Investment and
 9 Loan was the named "lender," contradicted the beneficiary status, "MERS Terms and
 10 Conditions." MERS shall serve as mortgagee of record with respect to all such mortgage
 11 loan solely as a nominee, in an administrative capacity, for the beneficial owner or owners
 12 thereof from time to time. MERS shall have no rights whatsoever to any payments made
 13 on account of such mortgage loans, to any servicing rights related to such mortgage loans,
 14 or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert
 15 any rights (other than rights specified in the Governing Documents) with respect to such
 16 mortgage loans or mortgaged properties. References herein to "mortgage(s)" and
 17 "mortgagee of record" shall include deed(s) of trust and beneficiary under a Deed of Trust
 18 and any other form of security instrument under applicable State law." (as found on the
 19 MERS website)
 20

21 27. Defendants' use of MERS created the method to defraud the Home
 22 Purchasers, the Plaintiffs herein, because MERS was not the holder of the Note and MERS
 23 was not a transferee in possession who was entitled to the rights of a holder or had
 24 authority under State law to act for the holder.
 25

-11-

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245 E. Liberty St., Ste 110
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1 28. The entities that are giving notice that they will foreclose on the homes of
2 the Plaintiffs are not MERS and are not the Trustee named on the Deed of Trust and are
3 not the parties that funded the loan of the Plaintiffs.

4 29. The Washoe County Recorder of Deeds does not contain any documents
5 assigning or appointing any substitute trustee nor substitute beneficiary on the deeds of
6 trust other than by MERS who was not a true beneficiary.

7 30. On February 20, 2004, the Burkes executed a note and deed of trust with
8 Fremont Investment and Loan listed as the "lender," MERS listed as the beneficiary and
9 First American as the Trustee for \$318,750.00.

10 31. The Defendant Litton Loans has refused to modify the loan to the current
11 market value even though Defendants had participated in the acts that caused the loss of
12 value of the home or to accept back payments which were offered by the Plaintiffs Burke
13 for payment on the loan.

14 32. On March 5, 2009, Quality Loan Service Corp. sent a Notice of Default to
15 the Plaintiffs. Quality Loan Service Corp. is not a contracting party with the Burkes when
16 the note and Deed of Trust was executed.

17 33. Quality Loan Service further notified the Plaintiffs that their home would be
18 sold on July 1, 2009.

19 34. The home where the Burkes live which was subject to this note was sold on
20 or about July 1 or July 9, 2009.

21 35. The property was allegedly purchased by HSBC Bank USA, National
22 Association as Trustee, under the Pooling and Servicing Agreement dated May 1, 2004,
23 Fremont Home Loan Trust 2004-B, Asset Backed Certificates, Series 2004-B.
24
25

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1 36. MERS did not contact Burkes nor notify the Burkes that it was no longer the
 2 beneficiary under the deed of trust on their property.

3 37. MERS did not contact Burkes nor notify the Burkes that it was no longer the
 4 beneficiary under the deed of trust on their property.

5 38. The Smiths executed a note and deed of trust (Attached as Exhibit 2) to
 6 Fremont Investment and Loan on February 13, 2006, for their property at 14255
 7 Windriver Lane, Reno, Nevada 89511 in the amount of \$360,000.00.

8 39. The Defendant Carrington Mortgage Services, LLC has refused to modify the
 9 loan to the current market value even though Defendants had participated in the acts that
 10 caused the loss of value of the home.

11 40. On October 7, 2009, Carrington Mortgage Services, LLC sent a Notice of
 12 Intent to Foreclose to the Smiths.

13 41. MERS did not contact the Smiths nor notify the Smiths that it was no
 14 longer the beneficiary under the deed of trust on their property.

15 42. The deed of trust expressly reserves the right to the Lender to cause the
 16 Trustee to execute written notice of the occurrence of an event of default and of Lenders
 17 election to cause the Property to be sold. The deed of trust further provides that the
 18 Trustee shall give public notice of sale to the persons and in the manner prescribed by
 19 applicable law.
 20

21 43. Defendants knew that the business practices in which they were engaged
 22 would result in driving the market for housing into unnaturally high demand which would
 23 cause the prices on homes to escalate beyond their normal value. Defendants further
 24 knew that lending money to persons who were not qualified in such large numbers would
 25 cause the market to eventually crash. The Defendants believed this to the extent that the

1 Defendants Carrington Mortgage Services, LLC or Litton Loans or their successor in
2 interest or Corporations A - Z purchased credit default swaps, in essence, side bets that
3 bet that the Plaintiffs' and other loans given in the same time frame and under the same
4 circumstances would fail.

5 FIRST CLAIM FOR RELIEF

6 (Wrongful Foreclosure)

7 44. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
8 set forth in this claim.

9 45. An assignment of an obligation under a mortgage, the note, operates as an
10 assignment of the mortgage.

11 46. The assignment of the obligations or notes of the Plaintiffs to the investors
12 by way of mortgage-backed securities wherein a co-mingling of the notes occurred,
13 transferred the deed of trust to the investors in that mortgage-backed security and no
14 interest in the note or deed of trust was retained by the "lender Fremont" / servicers
15 Carrington and Litton Loans or by MERS as beneficiary or nominee of the lenders nor was
16 any interest retained by the servicers Carrington and Litton Loans, who have called for
17 the defaults on the Plaintiffs' properties in order to initiate foreclosures against the
18 Plaintiffs' home.

19 47. The obligations of the Plaintiffs on which the Defendants Carrington
20 (Smiths) and Litton Loan (Burkes), with the assistance of Quality Loan Services
21 Corporation (Burkes), have declared a default which was discharged when the investors in
22 the mortgage-backed securities claims were paid as a result of over-collateralization of the
23 obligations and/or credit default swaps and/or federal bailout funds and other monies
24 paid to the investors who owned the note of the Plaintiffs co-mingled with the other notes
25

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1 and obligations and/or to the Defendants or bank holding companies who disbursed the
2 monies in such fashion as to extinguish the obligation of Plaintiffs to repay the monies
3 that they borrowed which are at issue herein.

4 48. Neither the investors in the mortgage backed securities nor any other entity
5 or person who had a right to payment from the borrowers or who was a lawful beneficiary
6 under the deeds of trust ever declared a default of the notes executed by Plaintiffs and no
7 true beneficiary with a beneficial interest under the deed of trust ever declared a default
8 under the notes and deeds of trust and no proper beneficiary under the deeds of trust ever
9 directed a sale of the property owned by Plaintiffs in which MERS is named as beneficiary
10 or nominee of the beneficiary/lender at issue in this action.

11 49. Carrington (Smiths) and Litton Loan (Burkes), the servicers of the notes,
12 have no investment in the mortgage-backed securities as investors, no beneficial interest
13 in the note or deed of trust of the Plaintiffs and no right to declare a default on the note
14 and the allegations by Carrington and by Litton Loan through Quality Loan Services in the
15 notices of default and election to sell the Plaintiffs' properties to the effect that "the
16 beneficiaries have declared defaults and directed that the properties be sold" is not true.
17 and the Defendants Carrington and Litton Loan who have made that false representation
18 knew at the time such notices were executed, mailed and recorded that those allegations
19 were false.
20

21 50. Foreclosures against the properties of the Plaintiffs cannot commence
22 without a written declaration of default for each property and direction to the trustee to
23 sell the property for each property made by the persons or entities to which the
24 obligations under the notes are owed.
25

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Oct 21 2009 09:11am P025

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1 51. After the debts or some of the debts on the notes were discharged to the
 2 investors, the assignments of the deeds of trust and notes, the designations of substitute
 3 trustees and substitute beneficiaries, the declarations of default and directions to sell the
 4 properties, the notices of default and election to sell and the notices of sale were nullities
 5 and transferred nothing and, in particular, no rights to foreclose, in favor of Carrington or
 6 Litton Loan or Quality Loan Services Corp.

7 52. None of the Defendants nor any other person or entity with any legal right to
 8 declare a default and direct a sale on any of the Plaintiffs' notes and/or deeds of trust
 9 naming MERS as beneficiary or nominee of the beneficiary/lender ever declared a default
 10 and directed a sale of any such property of Plaintiffs herein.

11 53. As a direct and proximate result of the unlawful and wrongful
 12 commencement and advancement of foreclosure proceedings by Defendants complained
 13 of herein, the Plaintiffs who have been subjected to such actions by Defendants have
 14 suffered damages including without limitation economic damages, severe and disabling
 15 psychological and physical pain and suffering, humiliation, embarrassment, damage to
 16 credit and other damages as alleged herein.

17 54. Plaintiffs have been required to retain counsel and expend costs to
 18 prosecute this claim for relief.
 19

20 SECOND CLAIM FOR RELIEF

21 (Fraud in the Inducement)

22 55. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
 23 set forth in this claim.

24 56. Defendants Litton Loans and Carrington, through their agents and
 25 predecessor (Fremont Investment & Loan), and successors in interest failed to disclose

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Oct 21 2009 09:12am P026

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1 the material terms of the loans and incidental services to Plaintiffs at the execution of the
2 closing papers. Carrington and Litton Loans further failed to explain the fact that
3 Plaintiffs and others similarly situated persons entering into similar loans by the millions
4 across this country were not qualified to enter the loans on the terms stated, failed to
5 advise the Plaintiffs that the Plaintiffs as well as the other persons as borrowers were
6 involved in a scheme to defraud investors who invested in funding loans that were more
7 than likely to fail and cause a catastrophic drop in real estate values.

8
9 57. Defendants Carrington, Litton Loan, Quality Loan Services, MERS and
10 Corporations A - D failed to advise the Plaintiffs that the obligations on their notes had
11 been discharged in whole or in part, and failed to advise Plaintiffs of the fact that
12 Defendants had no lawful rights to foreclose upon the homes of the Plaintiffs.

13 58. Defendants concealed the true terms of the loans, and the risks of the
14 transactions, including, but not limited to, negative amortization, prepayment penalty
15 provisions, the risk of default and the risk of foreclosure from Plaintiffs and failed to
16 advise Plaintiffs that the Defendants had no lawful right to foreclose upon their homes
17 and further failed to notify the Plaintiffs that the obligations of the Plaintiffs on the notes
18 had been discharged in whole or in part.

19 59. Defendants through their agents, predecessors and successors in interest
20 misrepresented the ability of Plaintiffs to qualify for the loans.

21 60. Defendants knew that, had the truth been disclosed, Plaintiffs would not
22 have entered into the loans and had the truth of the discharges been revealed, the
23 Plaintiffs would not have made payments to the Defendants pursuant to those obligations.
24
25

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1 61. Defendants intended to induce Plaintiffs into reliance upon these
2 representations and failures to disclose both at closing and later in the modification
3 proved the intent of the Defendants.

4 62. Defendants failed and refused to advise Plaintiffs that Defendants had not
5 funded the loans and that Plaintiffs owed no payments to Defendants, nor did Defendants
6 inform Plaintiffs that they did not have a lawful right to sell Plaintiffs' home in foreclosure
7 and did not have any right to deprive the Plaintiffs of their home by any means and that,
8 at most, all Defendants would have had to enforce is an unsecured debt on behalf of
9 unknown parties.

10 63. But for the failure to disclose the true and material terms of the transactions
11 that began the loans and the failure to disclose that Defendants had no right to foreclose
12 upon the homes of the Plaintiffs, that Plaintiffs would lose their homes, Plaintiffs were not
13 allowed to read the agreements between the Defendants and others to securitize and
14 transfer the Plaintiffs' notes and any additional documents that would have alerted the
15 Plaintiffs to the conspiracy to defraud them and other borrowers and investors by the
16 Defendants. Defendants' intentional misrepresentations, their failure to disclose the
17 material terms of the transaction, and their failure to state that Defendants have no right
18 to collect payments from Plaintiffs or any right to foreclose on their homes, induced
19 Plaintiffs to enter into the loans as alleged herein.

20 64. The Defendants knew that they had no lawful right to foreclose on any of the
21 Plaintiffs' homes and that the Defendants had not received any right to collect on the
22 notes without consideration and, thus, were not holders in due course of the notes of the
23 Plaintiffs.
24
25

1 65. As a direct result of the failure to disclose all these matters discussed herein,
 2 Defendants have caused Plaintiffs damages, pain and suffering, mental anguish, in
 3 addition to requiring that Plaintiffs retain counsel to prosecute these claims.

4 THIRD CLAIM FOR RELIEF

5 (Conspiracy to Commit Fraud by the Creation, Operation and
 6 Use of MERS System)

7 (As to Defendants MERSCORP, Inc., MERS, Inc.,
 8 Indymac, and Corporations A - Z)

9 56. Plaintiffs incorporate by this reference and reallege the allegations
 10 contained in all the paragraphs above as if set forth fully herein

11 67. Upon information and belief, Defendants MERSCORP, Inc., MERS, Inc.,
 12 and Carrington and Litton Loan and Corporations A - Z (hereinafter in this Third Claim
 13 for Relief collectively referred to for purposes of this Third Claim as the "Defendant
 14 conspirators"), and each of them, did knowingly and willfully conspire and agree among
 15 themselves to engage in a conspiracy to promote, encourage, facilitate and actively engage
 16 in fraudulent and predatory lending practices perpetrated on Plaintiffs as alleged herein
 17 and the actions of the Defendant conspirators were taken as part of the business policies
 18 and practices of each Defendant conspirator in participating in the MERS system.

19 68. Upon information and belief, the Defendant conspirators are or have been
 20 shareholders in MERSCORP, Inc., MERS, Inc. and/or members of the MERS system, and,
 21 as to Defendant conspirators, Carrington and Litton and Corporations A - Z have,
 22 through their employees and agents, served as members of MERSCORP, Inc. and/or
 23 MERS, Inc., and participated in the design and coordination of the MERS system
 24 described in this complaint
 25

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69. Defendants' participation as shareholders, directors, operators, or members of MERSCORP, Inc. and/or MERS, Inc. are as follows:

a. MERSCORP, Inc. is the operating company that owns and operates the MERS System described herein, and is the parent company of Mortgage Electronic Registration Systems, Inc. ("MERS, Inc.").

b. Defendants Carrington and Litten and Corporations A - Z are Members of MERS, Inc.

70. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

71. Beginning at a time unknown to the Plaintiffs, prior to 2004, and continuing through at least the present, the Defendant co-conspirators engaged in a conspiracy to unlawfully deprive borrower homeowners of property in numerous states through issuing predatory loans as described herein, and through securitization and subsequent processes described herein.

72. MERS, Inc. and/or MERSCORP, Inc. arranged for bilateral and multilateral meetings, bilateral and multilateral teleconferences, and bilateral internet communications with potential Shareholders, actual Shareholders, candidates for Membership, and Members.

73. Upon information and belief, the Defendant conspirators have conspired among themselves and with other unknown parties to:

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- 1 a. develop a system of earning profits from the origination and
- 2 securitization of residential loans without regard for the rights of Plaintiffs,
- 3 and others similarly situated, by engaging in predatory and deceptive
- 4 residential lending practices as alleged in this complaint above; and
- 5 b. in furtherance of the system referred to immediately above, the
- 6 Defendant conspirators intentionally created, managed, operated and
- 7 controlled the Defendants MERSCORP, Inc. and MERS, Inc. for the specific
- 8 purpose of MERS, Inc. being designated as a sham "beneficiary" in the
- 9 original deeds of trust securing those loans, including the loans made to
- 10 Plaintiffs and other similarly situated individuals by Fremont Investment &
- 11 Loan and Corporations A - Z; and
- 12 c. Defendant conspirators intentionally created, managed, operated and
- 13 controlled the MERS system with the unlawful intent and for the unlawful
- 14 purpose of making it difficult or impossible for Plaintiffs and other victims
- 15 of such industry-wide predatory policies and practices to identify and hold
- 16 responsible the persons and entities responsible for the unlawful actions of
- 17 Defendant Carrington, Litton, MERS, Inc., and their co-conspirators
- 18 because MERS did not track the transfers but relied upon the members to
- 19 report the transfers when a foreclosure was initiated.
- 20
- 21 74. Upon information and belief, Defendant conspirators, through creation of
- 22 the MERS system alleged herein, adopted and implemented residential lending
- 23 underwriting guidelines for use in Nevada and in other states which:
- 24
- 25 a. were intended to, and did, generate unprecedented profits for the
- Defendant conspirators and their co-conspirators at the expense of Plaintiffs

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1 and other persons who were fraudulently induced by the Defendant
 2 conspirators and their co-conspirators into taking out residential loans that
 3 were known by the Defendant conspirators and their co-conspirators, at the
 4 time the loans were originated, and,

5 b. were likely to result in foreclosure on those loans and loss by
 6 Plaintiffs and other borrowers of their homes, with reckless disregard and
 7 intentional indifference by the Defendant conspirators and their co-
 8 conspirators of the likelihood of such foreclosure.

9 75. Removing the transfers from the recording process and failure to record a
 10 real estate transaction on the public record maintained by the county clerks prevents
 11 oversight of real estate transactions by the public and by public officials.

12 76. MERSCORP, Inc. informed its co-conspirators that using the MERS system
 13 would remove transaction records from the public record.

14 77. MERSCORP, Inc. and/or MERS, Inc. have publicly stated the following:

15 a. "MERS eliminates the need to prepare and record assignments when
 16 trading residential and commercial mortgage loans."

17 b. "With the recording of the security instrument(s), MERS becomes the
 18 mortgagee in the county land records and no assignments are required
 19 during a subsequent sale and transfer of the loan between MERS members."

20 c. "There is no dependency on the corporate name you use on closing
 21 documents and the corresponding corporate name on the MERS System
 22 because the MERS System is not the legal system of record of ownership of
 23 mortgage loans."
 24
 25

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1 78. Upon information and belief, the MERS system was created for the unlawful
2 purpose of hiding and insulating the brokers and originators of predatory toxic loans from
3 accountability and liability by creating an entity which simultaneously informed all
4 lenders who originated loans that named MERS as the beneficiary of the following:

5 a. MERS would never own or acquire any actual beneficial interest in
6 any loan in which it was named as beneficiary under the deed of trust, and
7 that

8 b. MERS could be named as beneficiary for purposes of public notice
9 and notice to the borrower and would act in that capacity if so designated by
10 the lender who originated the loan.

11 79. Upon information and belief, the intent and purpose of the Defendant
12 conspirators and their co-conspirators in the creation, management, operation and
13 control of MERS was, without limitation, to make it impossible for the borrowers, their
14 attorneys, the courts, the government, and anyone other than the Defendant conspirators
15 who created and controlled MERS to identify the actual beneficial owner of any particular
16 loan or the property which was the collateral securing that loan until such time, if any,
17 that foreclosure action was initiated. As a result, Plaintiffs was deprived of the right to
18 attempt to modify their toxic loans, as the true identity of the actual beneficial owner was
19 intentionally hidden from Plaintiffs and other similarly situated individuals.

20 80. MERSCORP, Inc.'s marketing materials also promise Members with
21 assistance with foreclosures. MERSCORP, Inc. and/or MERS, Inc. have publicly stated:
22 "MERS has assembled a Foreclosure Manual to provide a state-by-state guideline for our
23 Members to follow when foreclosing a mortgage loan in the name of MERS."
24
25

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1 81. Upon information and belief, the Defendant conspirators' actions in creating
 2 the MERS system, which was dependent on fraudulent and deceptive practices that
 3 included, but were not limited to, making loans to consumers such as Plaintiffs in
 4 violation of the Truth in Lending Act, and the Real Estate Settlement Procedures Act and
 5 used underwriting guidelines that were wildly divergent from the guidelines that had been
 6 used to give loans in this country for decades, created a system to unlawfully deprive
 7 Plaintiffs of their interest in their homes.

8 82. MERSCORP, Inc. and/or MERS, Inc. offered Members increased profit.
 9 MERSCORP, Inc. has publicly stated:

10 a. "The MERS web site enables you to target directly your MERS®
 11 Ready products and services to MERS members."

12 b. "Commercial originators and issuers save hundreds to thousands of
 13 dollars (in the case of cross-collateralized loans) in preparing and recording
 14 assignments. Where the originator has not recorded a MERS as Original
 15 Mortgagee (MOM) security instrument, the issuer saves the costs of
 16 assigning to the Trust by having the originator assign to MERS."

17 c. "It will reduce risk and generate more profits for lenders because the
 18 Notes registered on it will be in electronic format. It shortens the timeframe
 19 between the closing and the securitization of the loan, enabling the Note to
 20 move instantly, creating faster funding."

21 83. MERSCORP, Inc.'s rules and by-laws, to which MERS Members agree,
 22 require the following:

23 BY COMPLETING, SIGNING, AND SUBMITTING THIS APPLICATION, THE
 24 APPLICANT IS AGREEING TO BE A MERS MEMBER. THE APPLICANT
 25

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HEREBY AGREES TO PAY ALL FEES AND EXPENSES SET FORTH IN THE
MERS RESIDENTIAL FEE SCHEDULE, WHICH MAY CHANGE FROM TIME TO
TIME; ABIDE BY ALL EXISTING MERS RULES AND PROCEDURES, WHICH
ARE INCORPORATED HEREIN BY REFERENCE AND MAY BE AMENDED
FROM TIME TO TIME; AND COMPLY WITH THE TERMS AND CONDITIONS
SET FORTH IN THE ATTACHED ADDENDUM ENTITLED TERMS AND
CONDITIONS. (Emphasis in original).

84. The MERSCORP, Inc. rules and by-laws, to which MERS Members agree,
cannot be carried out lawfully because they require the following:

1. MERS, which shall include MERSCORP, Inc. and Mortgage Electronic
Registration Systems, Inc., and the Member shall abide by these Terms and
Conditions, the Rules and Procedures (collectively, the "Governing
Documents"), copies of which will be supplied upon request. The Governing
Documents shall be a part of the terms and conditions of every transaction
that the Member may make or have with MERS or the MERS® System
either directly or through a third party. The Member shall be bound by any
amendment to any of the Governing Documents.
2. The Member, at its own expense, shall promptly, or as soon as
practicable, cause MERS to appear in the appropriate public records as the
mortgagee of record with respect to each mortgage loan that the Member
registers on the MERS® System. MERS shall serve as mortgagee of record
with respect to all such mortgage loans solely as a nominee, in an
administrative capacity, for the beneficial owner or owners thereof from
time to time. MERS shall have no rights whatsoever to any payments made

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on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law. . . .

6. MERS and the Member agree that: (i) the MERS® System is not a vehicle for creating or transferring beneficial interests in mortgage loans, (ii) transfers of servicing interests reflected on the MERS® System are subject to the consent of the beneficial owner of the mortgage loans, and (iii) membership in MERS or use of the MERS® System shall not modify or supersede any agreement between or among the Members having interests in mortgage loans registered on the MERS® System."

85. The times, dates, and locations of the various meetings and communications among and between the conspirators are solely within the knowledge of the conspirators and have not been made public by MERS or its co-conspirators.

86. In addition to the allegations made related to the shareholder, director, and creator conspirators, the MERS system conspiracy consisted of:

a. The Lender conspirators who agreed to procure loans by means of violation of state and Federal lending laws, as further described in the previous claims for relief.

b. The Lender, Securitizer and Servicer conspirators who agreed to use the MERS system unlawfully and in violation of state and Federal laws to

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Oct 21 2009 09:13am P036/099

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1 deceive homeowners and securities purchasers by misleading them to
2 believe that the conspirators had legal authority to foreclose when in fact,
3 the conspirators do not have legal authority to foreclose on loans which were
4 made part of the MERS system, as further described in the previous claims
5 for relief.

6
7 c. The Securitizer conspirators who were aware of these violations of
8 law during procurement and agreed to purchase the loans knowing that the
9 law had been violated.

10 d. The Securitizer conspirators who, upon information and belief,
11 packaged and sold loans knowing that such loans were based on deeds of
12 trust that had been split from the notes, and based on loans that had been
13 sold as part of the securitization process before the loans were finalized with
14 the borrowers. Thereafter, the purported interest in the obligation, the note
15 as evidence of the obligation, and the security interest for the obligation
16 were transferred multiple times without recording the change in ownership
17 of an interest in real property in the appropriate county records. This was
18 accomplished by the creation of the private parallel record keeping service
19 known as the MERS system, whereby MERS, Inc. is named in the deed of
20 trust which is supposed to be the security for the underlying loan obligation.
21 MERS is named as the nominee of the lender, but not as the holder of the
22 note or the actual lender. Rather, MERS is named as beneficiary for the
23 purpose of deceiving the borrower and the clerk's office where the deed of
24 trust is recorded.
25

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Oct 21 2009 09:13am P037/099

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1 e. A securitization process that was based on loans that were made
2 based on residential loan underwriting guidelines that were designed to
3 generate as many loans as possible to fuel the securitization process to feed
4 the demand for mortgage-backed securities, the faulty and toxic nature of
5 which loans was hidden by the MERS system. As a result of MERS being
6 named the beneficiary, and through the processes described herein, the note
7 and deed of trust are "split." When the note is split from the deed of trust,
8 then the note becomes unsecured and a person holding only the note lacks
9 the power to foreclose and a person holding only a deed of trust suffers no
10 default because only the holder of the note is entitled to payment on it. The
11 monetary effect of utilizing the MERS system, in addition to the allegations
12 set forth otherwise herein, was to hide profits and fees that were not
13 disclosed to the borrower or to the investor in the note, which, in some
14 cases, upon information and belief, were in excess of the principal value
15 stated on the note.

16
17 f. The Securitizer conspirators who violated state and Federal securities
18 laws through their descriptions of the financial derivatives created by the
19 conspiracy.

20 g. The Lender conspirators who agreed to supply loans to the
21 Securitizers despite knowledge that the Securitizers would sell them in
22 violation of the law.

23 h. The Servicer conspirators who agreed to unlawfully foreclose on
24 loans despite the separation of the loan from the deed of trust which made
25 the foreclosure unlawful because the debt was no longer secured.

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1 37. All of the conspirators agreed to the participation of the other conspirators
 2 in their individual roles in the conspiracy. The loan files of each of the loans disclose the
 3 legal violations and document that the Lenders agreed to purchase loans from third party
 4 originators and to sell them to the Securitizers. The Securitizers agreed to purchase the
 5 loans and pool them with full knowledge of the contents of the loan files. The Servicers
 6 agreed to foreclose with full knowledge of the loan file for each loan.

7 88. All of the conspirators continued to agree to the conspiracy over the course
 8 of thousands of transactions.

9 89. Defendants Carrington and Litton have acted as servicers in the conspiracy.

10 90. Defendants Carrington, Litton, HSBC and Corporations A - Z have acted as
 11 Securitizers in the conspiracy.

12 91. For the purpose of forming and effectuating this conspiracy, Defendants and
 13 co-conspirators did the following things, among others:

14 a. The Defendants acting as Lenders described above systematically and
 15 repeatedly violated Federal and state lending laws in order to originate
 16 mortgages, as described in the previous claims for relief;

17 b. The Defendants acting as Securitizers knowingly and by agreement
 18 serviced the unlawfully obtained mortgages;

19 c. The Defendants acting as Lenders, Securitizers and Servicers utilized
 20 and benefited from the MERS system as a means of preventing detection by
 21 law enforcement or by the public and as a means of unlawful foreclosure to
 22 the detriment of homeowners;

23 d. The Defendants acting as Lenders and Securitizers, with knowledge
 24 and agreement of the co-conspirators, utilized the MERS system in such a
 25

LITTON LOAN LEGAL DEPT Fax: 713-966-88

Oct 21 2009 09:13am P039/099

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1 manner as to split the promissory note from the mortgage or deed of trust
2 and thereby destroy the note holders' security, nevertheless proceeding with
3 unlawful foreclosure actions to the detriment of homeowners;

4 e. All Defendants named herein as co-conspirators profited from their
5 respective roles in originating loans, selling them, and pooling their MERS
6 registered home loans together in large bundles which were sold and turned
7 into financial derivative instruments;

8 f. The mortgage securitization process became known in financial
9 industry parlance as "slicing and dicing." The slicing and dicing results in a
10 pool of mortgages which have lost their individual characteristics but which
11 have a high value to those who create them;

12 g. The Defendants acting as Securitizers named herein purchased
13 mortgages from the Defendants acting as lenders named herein for
14 securitization;

15 h. The Defendants named as Securitizers herein sold the securitized and
16 pooled mortgages as asset backed financial derivatives with affirmative
17 claims that Defendants were unaware of any legal issues which would affect
18 the value of the assets backing the securities, which was untrue, as
19 Defendants actually knew or should have known that the mortgages were
20 unlawfully obtained and subject to rescission, and knew or should have
21 known that the mortgages and promissory notes had been split and
22 therefore the note holder no longer had the right to foreclose, assuming that
23 it ever did;
24
25

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- 1 i. The Defendants described herein as Servicers unlawfully foreclosed
- 2 on homeowners' properties. The Servicers misrepresented that they had the
- 3 legal right to foreclose, when, in fact, they did not. The Servicers'
- 4 foreclosures illegally deprived homeowners of property;
- 5 j. All Defendants named as MERS members agreed to promote MERS,
- 6 an ostensibly lawful business, and to utilize MERS in an unlawful manner to
- 7 deprive Plaintiffs and those similarly situated of property.
- 8
- 9 92. The securitization process took distinct loans, deeds of trust, and mortgages,
- 10 and pooled them together in such a manner that they lost their unique identity.
- 11 Hundreds of such financial derivative instruments were created by the co-conspirators.
- 12 The co-conspirators all profited from their respective roles in the process, including, but
- 13 not limited to, the following pooling agreements. These pooling agreements are examples
- 14 of the type of pooling agreement utilized by the Defendants Carrington, Litton and
- 15 Corporations A - Z:
- 16 a. Defendant and co-conspirators Carrington, Litton, HSBC, and
- 17 Corporations A-Z profited from the conspiracy since approximately 18% of
- 18 the mortgages in one example loan pool were originated by, for example,
- 19 Countrywide Home Loans, Inc.
- 20 b. The HSI Asset Loan Obligation Trust 2006-2, was sponsored and
- 21 sold by HSBC Bank. Countrywide Home Loans, Inc. originated 13% of the
- 22 loans in this instrument.
- 23 c. The Banc of America Funding 2007-4 Trust was sponsored by co-
- 24 conspirator Bank of America, N.A. The Master Servicer of this financial
- 25 derivative instrument is Defendant and co-conspirator Wells Fargo Bank,

LITTON LOAN LEGAL DEPT Fax: 713-966-86

Oct 21 2009 09:13am P041/099

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1 N.A. GMAC Mortgage, L.L.C. is also among the servicers. The originators of
 2 the loans pooled in this instrument include Defendants and co-conspirators
 3 GMAC Mortgage, L.L.C., Countrywide Home Loans, Inc., Wells Fargo Bank,
 4 N.A., Bank of America, N.A., National City Mortgage Co.

5 d. The Banc of America Funding 2007-4 Trust was sponsored by and
 6 co-conspirator Bank of America, N.A. The Master Servicer of this financial
 7 derivative instrument is Defendant and co-conspirator Wells Fargo Bank.

8 N.A. GMAC Mortgage, L.L.C. is also among the servicers. The originators of
 9 the loans pooled in this instrument include Defendants and co-conspirators
 10 GMAC Mortgage, L.L.C., Countrywide Home Loans, Inc., Wells Fargo Bank,
 11 N.A., Bank of America, N.A., National City Mortgage Co. The Banc of
 12 America Funding 2007-7 Trust hired Defendants and co-conspirators Bank
 13 of America, N.A., CitiMortgage, Inc., GMAC Mortgage, L.L.C., and National
 14 City Mortgage Co. as servicers.

15 e. Defendant and co-conspirator Wells Fargo Bank, N.A. is the master
 16 servicer of the HSI Asset Loan Obligation Trust 2007-2. 18% of the
 17 mortgages in that loan pool were originated by Defendant Countrywide
 18 Home Loans, Inc. 26% of the mortgages in that pool originated from HSBC
 19 Mortgage Corporation (USA). HSBC Mortgage Corporation (USA) profited
 20 from packaging its loans together with those of Defendant and co-
 21 conspirator Countrywide Home Loans, Inc.

22 f. In the J.P. Morgan Alternative Loan Trust 2007-A2, J.P. Morgan
 23 Chase Bank was an originator of loans which were pooled. JPMorgan Chase
 24 Bank, National Association is one of the servicers of the mortgage pool.
 25

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1 Wells Fargo Bank, N.A. is the master servicer. U.S. Bank National
2 Association is the trustee. Countrywide Home Loans, Inc. sold loans to the
3 trust. JPMorgan Chase Bank is one of the servicers.

4 93. Upon information and belief, Plaintiffs' loans were securitized, "sliced and
5 diced" and pooled into mortgage pools such as the ones described herein as part of the
6 conspiracy related to the creation and operation of the MERS system, and Defendants,
7 and each of them, profited from same and are liable for their acts and the acts of their co-
8 conspirators in creating the MERS system, including, but not limited to, the use of MERS-
9 approved and created documents to establish the loans (including, but not limited to, the
10 form of deed of trust), and in participating in the securitization process described herein,
11 thus, involving the Plaintiffs in this fraud upon the investors without their knowledge.

12 94. Upon information and belief, Defendant conspirators utilized funds received
13 as part of the Troubled Asset Relief Program payouts and payouts from the Federal
14 Reserve or the FDIC to further the conspiracy to defraud Plaintiffs to deprive them of
15 their money, to deprive them of their property and any equity in their property, to
16 unlawfully initiate foreclosure on their home and, by those foreclosures, ruin their credit
17 and credit rating and standing in the community, to pay investors in the mortgage-backed
18 securities which were comprised of the loans made to Plaintiffs and others similarly
19 situated, and to pay bonuses to employees and officers of the Defendant conspirators
20 based on their devising the subprime mortgage-backed products which were securitized
21 by loans of the type issued to Plaintiffs, and collateralizing and selling such products in
22 the United States and abroad.

23 95. As a result of Defendant conspirators' conspiracy described herein, Plaintiffs
24 have suffered injuries which include mental anguish, emotional distress, embarrassment,
25

1 humiliation, loss of reputation and a decreased credit rating which has, or will, impair
 2 Plaintiffs' ability to obtain credit at a more favorable rate than before the decrease in
 3 credit rating, the loss or anticipated loss of their Residence and other financial losses
 4 according to proof, and Plaintiffs have incurred attorneys' fees and costs in this matter.

5 96. Defendant conspirators' actions were wanton, willful and reckless, and
 6 justify an award of punitive damages against Defendant conspirators, and each of them.

7 FOURTH CLAIM FOR RELIEF

8 (Conspiracy to Commit Wrongful Foreclosure by the Creation, Operation and
 9 Use of the MERS System.)

10 97. Plaintiffs incorporate by this reference each and every paragraph of this
 11 Complaint as if set forth fully herein.

12 98. Upon information and belief, Defendants MERSCORP, Inc., MERS, Inc.,
 13 Indymac and Corporations A - Z for purposes of this Fourth Claim as the "Defendant
 14 conspirators"), and each of them, did knowingly and willfully conspire and agree among
 15 themselves to engage in a conspiracy to promote, encourage, facilitate and actively engage
 16 in wrongful foreclosures perpetrated on Plaintiffs as alleged herein, specifically in the
 17 First Claim for Relief, and the actions of the Defendant conspirators were taken as part of
 18 the business policies and practices of each Defendant conspirator in participating in the
 19 MERS system.
 20

21 99. The MERS system was known by Defendant conspirators as being used by the
 22 Defendant co-conspirators named in the first, second and third Claims for relief to
 23 facilitate the wrongful foreclosures complained of herein.

24 100. Specifically, the MERS system was designed to remove the need for
 25 recordation of transfers of deeds of trust as alleged herein. This component of the design

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Oct 21 2009 09:14am P044/099

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1 of the MERS System facilitated the wrongful foreclosures complained of herein by making
 2 it easier to transfer the purported beneficial interest in a deed of trust and to appoint a
 3 trustee for the purpose of foreclosing on a property, despite the fact that the deed of trust
 4 no longer provided security for a note as a result of the note having been separated from
 5 the deed of trust as alleged herein.

6 101. The MERS system does not track the transfer of the note.

7 102. The MERS system does not track the identity of the holder of the note.

8 103. Upon information and belief, the Defendant conspirators are or have been
 9 creators and/or directors of MERSCORP, Inc., MERS, Inc. and/or members of the MERS
 10 system, and, as to Defendant conspirators, and participated in the design and
 11 coordination of the MERS system described in this complaint.

12 104. Defendants' participation as shareholders, directors, operators, or members
 13 of MERSCORP, Inc. and/or MERS, Inc. are as follows:

14 a. MERSCORP, Inc. is the operating company that owns and operates
 15 the MERS System described herein, and is the parent company of Mortgage
 16 Electronic Registration Systems, Inc. ("MERS, Inc.").

17 b. Defendants Carrington, Litton, HSBC and Corporations A-Z are
 18 Members of MERS, Inc.

19 105. Whenever this Complaint refers to any corporation's act, deed, or transaction,
 20 it means that such corporation engaged in the act, deed, or transaction by or through its
 21 members, officers, directors, agents, employees, or other representatives while they
 22 actively were engaged in the creation, management, direction, control, or transaction of
 23 its business or affairs.
 24
 25

LITTON LOAN LEGAL DEPT Fax: 713-966-88

Oct 21 2009 09:14am P045/099

FIFTH CLAIM FOR RELIEF

(Unjust Enrichment)

(As to All Defendants)

106. Plaintiffs incorporate each and every paragraph of this Complaint as if fully set forth in this claim.

107. Defendants' deceptive scheme as alleged herein unjustly enriched Defendants, and each of them, to the detriment of Plaintiffs, by causing Defendants, and each of them, to receive monetary payments from Plaintiffs and the class members and money to which Defendants were not entitled because the Defendants did not fund the loans of the Plaintiffs.

108. Specifically, Plaintiffs have been injured in their property and lost their cash and personal investments and right to peaceful enjoyment of their primary residences in a variety of ways, including but not limited to: All borrowers who were targeted for and lured into the mortgages sold by Defendants were kept from knowing the true purpose of the securitization and the use of the funds of the investors. This constituted a misrepresentation that caused Plaintiffs to make their monthly payments from the cash that represented the equity in their home to the Defendants. Moreover, upon information and belief, the variety of additional and separate payments charged for services and other items tangential to the loan were prohibitive. The result is that Plaintiffs assumed financial burdens that they would not otherwise have assumed, and paid Defendants funds to which the Defendants were not entitled nor owed.

109. The loan made to Plaintiffs were then repackaged, reassigned, and/or resold, each with a margin of profit for the assignee/buyer that would not otherwise have existed had Plaintiffs not been deceived by the original terms of the loan and/or the lack

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1 of disclosures as alleged herein. Likewise, Plaintiffs would not have continued to make
2 payments on the loans if the Defendants had properly disclosed the discharge in whole or
3 in part of the obligations on the notes to the investors.

4 110. Plaintiffs have paid an inflated interest rate that, upon information and
5 belief, would not have been agreed to but for the failure to understand the documents and
6 otherwise disclose the true terms and costs of the loans, tangential services, and out-of-
7 pocket costs and that the housing market would not, as represented by the Defendants
8 and their agent, Fremont Investment & Loan, continue to increase in value but would,
9 because of the acts of the Defendants, crash and cause catastrophic loss of value in the
10 real estate market.

11 111. Upon information and belief, Defendants, and each of them, retained and
12 continue to retain these ongoing and escalating profits to the detriment of Plaintiffs,
13 contrary to the fundamental principals of fairness, justice, and good conscience.

14 112. Upon information and belief, all payments made to the Defendants servicing
15 the Plaintiffs' mortgages are not due to the Defendants who are making demands for
16 collection.

17 113. The Defendants who have serviced the loan of the Plaintiffs did not fund the
18 loan, did not loan any money to the Plaintiffs, and are not holders in due course of the
19 notes of the Plaintiffs and have no lawful right to foreclose upon Plaintiffs' home if
20 Plaintiffs do not make the payments according to the note that were executed by Plaintiffs
21 at the time the loans were received.

22 114. Upon information and belief, all sums advanced to Plaintiffs for a loan by
23 investors has been repaid, settled, satisfied or otherwise are no longer outstanding.
24
25

1 115. Accordingly, Defendants, and each of them, should be ordered to return all
2 funds obtained as a result of their deceptive scheme on Plaintiffs.

3 **SIXTH CLAIM FOR RELIEF**

4 **(Relief requested by Plaintiffs)**

5 116. Plaintiffs incorporate each and every paragraph of this Complaint as if fully
6 set forth in this claim.

7 117. Plaintiffs Burke have been issued a notice of eviction from their property at
8 4695 Cavataio Circle, Reno, Nevada and it is presently held an REO by HSBC.

9 118. Plaintiffs Smith have been given an intent to foreclose notice by Carrington.

10 119. Plaintiffs have no adequate remedy at law to stop these unlawful
11 foreclosures and evictions without this Court's intervention.

12 120. Plaintiffs will suffer irreparable harm from the loss of their homes and
13 Defendants will suffer nothing since no payments are owed to them on account of the
14 notes and mortgages have been discharged in whole or in part and any foreclosure
15 pursued by them will be and is and has been unlawful.
16

17 **(Declaratory Relief)**

18 121. As alleged in Plaintiffs' claims regarding Defendants' wrongful foreclosure,
19 unjust enrichment and conspiracy, Plaintiffs' rights have been violated.

20 122. Defendants have threatened foreclosure against Plaintiffs for which
21 Defendants are not owed any payments, have no lawful right to foreclose and have
22 unlawfully deprived or attempted to deprive Plaintiffs of their homes and further have
23 failed to notify the Plaintiffs of the discharge of their obligations on the notes associated
24 with their mortgage.
25

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123. Plaintiffs seek a declaratory judgment against Defendants stating that Defendants have violated Plaintiffs' rights and that the Defendants have no right to foreclose on the Plaintiffs' homes and that the Defendants are entitled to no further funds from the Plaintiffs.

(Reformation)

124. Plaintiffs have been intentionally misled about the terms and conditions of the agreements entered into with Fremont Investment & Loan and have no enforceable contract with any of the Defendants.

125. The Plaintiffs are entitled to a reformation of their agreements and notes as unsecured notes or as partially or wholly discharged notes and a right to reformation of the contracts with the persons or entities who are owed obligations because of funding of the loans of the Plaintiffs.

(Quiet Title)

126. The Plaintiffs are entitled to have the property representing their homes and as referred to herein quieted in their names until and unless some party comes forward in this litigation who has a right to enforce the deeds of trust upon their homes free and clear of all encumbrances.

127. Plaintiffs have been required to retain counsel in this matter to protect Plaintiffs' rights and seek these remedies and have incurred attorneys' fees and costs in this matter.

WHEREFORE, Plaintiffs pray this court enter an order providing relief as follows:

1. For award of damages against Defendants and each of them on Plaintiffs' claims as applicable as alleged above in an amount to be shown at trial;

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Oct 21 2009 09:15am P049/099

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2 For an award of damages against Defendants, and each of them, on the
 Plaintiffs' state law claims, whether general, special or punitive as alleged above, in an
 amount to be shown at trial;

3. For an award of attorneys' fees and costs as provided by law;

4. For an order of reformation of the agreements on behalf of named Plaintiffs;

5. For an order of restitution on behalf of Plaintiffs;

6. For a temporary restraining order and preliminary and permanent
 injunction on behalf of Plaintiffs against the Defendants Carrington, Litton, HSBC
 and MERS, in addition to each and every one of their respective officers, agents,
 employees, servants, and attorneys, and those persons in active concert or participation
 with any of them or each of them, as specifically alleged above from transferring any
 interest in the subject properties, from proceeding with any foreclosure action as to any of
 the Plaintiffs' residences and/or proceeding with any collection action against the
 Plaintiffs;

7. For a declaratory judgment holding that Plaintiffs' rights were violated as
 alleged above;

8. For an order quieting title in the name of the Plaintiffs respectively the
 properties containing their homes without encumbrances unless a party comes forward
 who has the right to enforce the obligations as recited hereinabove;

9. That Plaintiffs have and recover from the Defendants pre-judgment interest
 as may be determined by statute and rule;

10. Pursuant to Nevada Rules of Civil Procedure, Plaintiffs demand a trial by
 jury on all issues of fact in this action; and

11. That this Court grant such other and further relief as it deems just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, I hereby certify that the foregoing document does not contain the social security number of any person.

DATED this 16th day of October, 2009.

HAGER & HEARNE

/s/ Treva J. Hearne, Esq.
Robert R. Hager, Esq.
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INDEX OF EXHIBITS TO
COMPLAINT

1. Exhibit "1" is a true and correct copy of the Adjustable Rate Note dated February 20, 2004, signed by Timothy Burke and Dawn Burke, and the Deed of Trust signed on February 20, 2004, signed by Timothy Burke and Dawn Burke. Exhibit "1" consists of 27 pages.

2. Exhibit "2" is a true and correct copy of the Note dated February 13, 2006, signed by Russell L. Smith and Shirley Hope Smith and the Deed of Trust dated February 13, 2006, signed by Russell L. Smith and Shirley Hope Smith.

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